

**BOARD OF APPEALS CASE NO. 5143**

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**BEFORE THE**

**APPLICANTS: Clyde & Oleita Hall**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to amend Condition No. 1  
in Board of Appeals Case No. 4742, to permit  
storage of furniture in a pole barn; 3111 Queens  
Castle Court, Street**

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**OF HARFORD COUNTY**

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**HEARING DATE: October 29, 2001**

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**Hearing Advertised  
Aegis: 6/13/01 & 6/20/01  
Record: 6/15/01 & 6/22/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Clyde and Oleita Hall, are requesting a variance from the requirements of the Code to amend Condition No. 1 of Board of Appeals Case No. 4742 and allow storage of furniture in a pole building to benefit a furniture store located on another parcel.

The subject parcel is located at 3111 Queens Castle Court, Darlington, Maryland 21034, and is more particularly identified on Tax Map 27, Grid 2B, Parcel 18. The property is developed as a mobile home park and single pole building and consists of 18.25 acres. The parcel is zoned AG/Agricultural and is entirely within the Fifth Election District.

This property has been the subject of two prior Board of Appeals cases that have direct impact in the present case. The Applicant, Mr. Clyde Hall, in Board of Appeals Case 3046, applied for a variance to allow (20) additional mobile home spaces to an existing mobile home park. After hearing testimony, the Hearing Examiner rendered a decision dated March 22, 1984, wherein approval was granted subject to six (6) conditions. Among the conditions, Condition No. 4 stated:

“4. The subdivision regulations for mobile home parks be adhered to.”

In 1997, without a permit, the Applicant constructed a pole building on the parcel to the rear of the mobile home park at the end of the cul-de-sac. During construction, Harford County imposed a stop work order. The Applicant was permitted to finish construction of the building if he filed for a variance before the Board of Appeals. Consequently, the Applicant requested relief from the provisions of Condition No. 4 previously rendered in Board of Appeals case 3046.

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The Applicant's request in Board of Appeals Case 4742 was to modify Condition No. 4 imposed in Case No. 3046 to allow reduction of the open space requirement on the parcel (imposed pursuant to mobile home park subdivision regulations), which would then allow the pole building to be constructed and used by the Applicant. According to the testimony of the Applicant's witness in Case No. 3046, Mr. Arthur Leonard, an expert civil engineer, "the Applicants constructed a pole barn on the parcel to store equipment used to maintain the mobile home park." The Hearing Examiner apparently relied upon this statement and statements by the Applicant under oath that the purpose of the pole building was to store equipment necessary for the maintenance of the mobile home park. The Hearing Examiner stated:

"The Applicant said that the pole barn is to be used for storage of maintenance equipment for the mobile home park."

The Hearing Examiner recommended approval of the Applicant's request and imposed three additional conditions of approval, among them Condition No. 1, which states:

- (1) The storage building shall be used only for the storage of maintenance equipment used in the mobile home park.

The current case involves a request by the Applicant to modify Condition No. 1 of Case No. 4742, to allow the pole building to be used for the storage of furniture being held for sale by the Applicant's other business, Glen Echo Furniture. The Applicant testified that he is the owner of Glen Echo Furniture which is located approximately three-quarters (3/4) of a mile away on Conowingo Road. The furniture store consists of a 10,000 square foot showroom with parking areas and, according to the witness, there is no room for expansion of the storage area on that property. As a result, the Applicant has been storing furniture purchased by Glen Echo Furniture in the pole barn located on the mobile home park site. The Applicant stated that he uses a truck to move furniture in and out of the pole barn. The Applicant stated that he would suffer a financial and practical hardship if this request were not granted because he would have no place to store the excess furniture required by his furniture business.

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The Applicant's daughter, Angela Winslow, appeared and testified that she was the co-owner of Glen Echo Furniture. Ms. Winslow testified that the furniture business is very competitive and that, in order to offer competitive prices to the buying public, it is often necessary to make special purchases of large lots of furniture. Such purchases necessitate the need for substantial additional storage space for this excess which is not available on the Glen Echo property.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. Mr. McClune indicated that the Department recommended denial of the subject request for a number of reasons. First, warehousing is not permitted in the AG/Agricultural district and this request represents a request for a use variance. Further, the Department found nothing unique about this parcel that would warrant a variance and lastly, the Department did not think that the use of this parcel for warehousing by a use on another property represented practical difficulty or hardship to this Applicant. In conclusion, Mr. McClune stated that the use of this building as a warehousing enterprise would change the character of the neighborhood which is almost entirely residential.

There were no protestants who appeared in opposition to the subject request.

### **CONCLUSION:**

The Applicants, Clyde and Oleita Hall, are requesting a variance from the requirements of the Code to amend Condition No. 1 of Board of Appeals Case No. 4742 and allow storage of furniture in a pole building to benefit a furniture store located on another parcel.

This request is not related to setbacks, height, square footage or other requirements of the Code variances from which would be characterized as area variances. In this case, warehousing is a use not permitted in the Agricultural District, thus, this variance is characterized as a use variance and is evaluated under different criteria than an area variance request.

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The Court of Special Appeals of Maryland noted the distinction between a use variance, which changes the character of the zoning district and where there is a more difficult burden of proving “unique hardship” (i.e. , needed to avoid confiscatory operations of an ordinance), and an area variance (height, set back, etc.) where there is a lesser burden of proving practical difficulty.

To prove undue hardship for a use variance the following criteria must be met:

- (1) Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough)
- (2) The difficulties or hardships are peculiar to the subject property in contrast with other properties in the zoning district.
- (3) Hardship was not the result of the Applicant’s own actions.

To prove practical difficulty for an area variance, the following criteria must be met:

- (1) Whether strict compliance with requirements would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
- (2) Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would do substantial relief.
- (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

**Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App 28, 322 A 2d 220 (1974).**

In the instant case, the Applicant has failed each and every test enunciated by the Court of Special Appeals. There is no evidence that the Applicant, if denied his request, will be unable to secure a reasonable return or make any reasonable use of his property. This is a fully developed mobile home park and the pole barn was constructed to store maintenance equipment for that park. The hardship described by the Applicant and his daughter are not hardships peculiar to this property, in fact they are hardships associated with another parcel and business located 3/4 mile away from the subject parcel.

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Lastly, the purported hardship is of the Applicant's own making. The Applicant would ask the Board to allow a use variance on one parcel that would serve to benefit his business located on another parcel. Such relief cannot, in the opinion of the Hearing Examiner be granted without doing substantial injustice to the Harford County Zoning Code and long established tenets of Maryland law. As the Maryland Court of Special Appeals stated,

“Self-inflicted or self-created hardship is never considered proper grounds for a variance. Where an Applicant creates a non-conformity, the Board lacks the power to grant a variance.” Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995).

The Hearing Examiner recommends denial of the Applicant's request.

Date     NOVEMBER 27, 2001

William F. Casey  
Zoning Hearing Examiner